# Irfaz Agro Sdn Bhd v Perusahaan Otomobil Nasional Sdn Bhd

HIGH COURT (KUALA LUMPUR) — CIVIL APPEAL NO WA-12BNCvC-39–03 OF 2023
AHMAD SHAHRIR J
31 DECEMBER 2024

*Landlord and Tenant — Tenant's covenant — Covenant to repair — Tenant sued for return of security deposits — Landlord argued that tenant failed to properly reinstate warehouse to its original condition — Landlord counterclaimed for pro-rated rental, costs of reinstatement, and loss of rental income for three months — Sessions court allowed tenant's claim and dismissed landlord's counterclaim — Whether there was agreement for landlord to carry out reinstatement works — Whether there was any agreement by landlord to waive tenant's contractual obligations to reinstate warehouse to original condition — Whether landlord was entitled to counterclaim for damages — Contracts Act 1950 s 74*

The present appeal concerned a landlord and tenant dispute over a warehouse in Selangor. Perusahaan Otomobil Nasional Sdn Bhd ('the plaintiff') had entered into a tenancy agreement with Irfaz Agro Sdn Bhd ('the defendant') in relation to a warehouse for a period of three months with a monthly rental of RM340,000. This tenure was later extended twice by one month each time. After the expiry of the tenancy, the representatives of both parties together with the defendant's contractor had conducted a joint inspection of the warehouse. At the end of such process, the contractor identified 14 items requiring rectification works totalling RM52,650. After series of email exchanges between the parties, the plaintiff ultimately carried out only item 14 (warehouse floor cleaning works) costing RM24,000. The plaintiff then sued the defendant for the return of security deposits less agreed deductions. The defendant contended that the plaintiff failed to properly reinstate the warehouse to its original condition when the tenancy expired. The defendant counterclaimed for RM1,388,650 comprising pro-rated rental, costs of reinstatement works and loss of rental income for three months. After giving credit for the deposits held, the net sum claimed by the defendant was RM538,650. The learned sessions court judge ('the SCJ') found in favour of the plaintiff and dismissed the defendant's counterclaim, hence, the present appeal. The issues to be determined by the court in the present appeal were: (a) whether there was an agreement for the defendant to carry out items 1 to 13 of the reinstatement works — in relation to this issue, in finding for the plaintiff, the SCJ attached considerable weight to an email exchange between the parties whereby the plaintiff purported to confirm that 'all repair works be made by the defendant for all works except item 14' and the defendant's reply

which stated 'reconfirm per your previous email, that POINT NO 1 till POINT NO 13 is to be addressed by our contractors as per the quotation sent' ('the email exchange'); (b) whether the plaintiff fulfilled its obligations to reinstate the warehouse; and (c) whether the defendant was entitled to its counterclaim for damages.

**Held**, allowing the appeal with RM20,000 costs here and below, setting aside the decision of the sessions court, and allowing the defendant's counterclaim for prayers 18(i) and 18(ii):

(1) The court disagreed with the SCJ's finding that a mutual agreement existed between the parties whereby the plaintiff would only be responsible for completing item 14 while the defendant would assume responsibility for items 1 to 13. This was because this finding did not accord with the contemporaneous documentary evidence before the trial court. The tenancy agreement, specifically cl 2(e), imposed unequivocal obligations on the plaintiff with respect to the maintenance and return condition of the warehouse. The reinstatement obligations were specifically addressed in cl 4.2 of the tenancy agreement. The documentary evidence did not support the existence of any agreement by the defendant to waive the contractual obligations. The court was of the view that the defendant's reply was merely seeking clarification and the email exchange, when read in its proper context, showed the defendant was simply acknowledging receipt of the plaintiff's position rather than accepting it (see paras 10–13 & 15).

(2) The learned SCJ fell into error in concluding that proper vacant possession was delivered on 25 October 2021. The evidence before the court told a different story. As at the purported date of delivery, only item 14 of the reinstatement works had been completed. This constituted merely the warehouse floor cleaning works. The photographic evidence placed before the court was compelling. It revealed extensive damage to the premise that remained unrectified. These photographs documented multiple areas requiring substantial repairs and restoration. The physical state of the warehouse on 25 October 2021 could not, by any reasonable measure, constitute proper delivery of vacant possession (see para 18).

(3) The court opined that the characterisation of the defendant's claim for loss of rental as pure economic loss by the learned SCJ was misconceived. The plaintiff had a clear contractual obligation to properly reinstate the premises. Its failure to do so had immediate financial consequences for the defendant. Where such loss naturally flowed from a breach of contract, it was properly compensable (see para 21).

(4) The defendant had led cogent evidence to establish its counterclaim for pro-rated rental, reinstatement costs and loss of rental income. Section 74 of the Contracts Act 1950 provided for recovery of damages that

naturally arose in the usual course of things from a breach. The defendant had proven actual loss through evidence of the following: (a) the state of the warehouse before and after the five-month tenancy; (b) the fact that the warehouse was available for rent; (c) the timeline provided by contractors for rectification works; and (d) the impact of COVID-19 measures on completing the works (see paras 22, 28–29 & 37).

(5) The learned SCJ's award of general damages to the plaintiff could not stand as no evidence had been led to establish such loss. It was trite that a plaintiff seeking substantial damages must prove both the fact and quantum of damages. Similarly, the award of two sets of costs totalling RM33,000 was excessive for a two-day trial involving three witnesses and less than 215 pages of documents. While costs were discretionary, in the interest of justice they must be proportionate and reasonable (see paras 38–39).

**[Bahasa Malaysia summary**

Rayuan semasa membabitkan pertikaian antara tuan tanah dan penyewa ke atas sebuah gudang di Selangor. Perusahaan Otomobil Nasional Sdn Bhd ('plaintif') telah memeterai perjanjian penyewaan dengan Irfaz Agro Sdn Bhd ('defendan') berhubung sebuah gudang untuk tempoh tiga bulan dengan sewa bulanan RM340,000. Tempoh ini kemudiannya dilanjutkan dengan tambahan tempoh dua bulan. Selepas tamat tempoh penyewaan, wakil kedua-dua pihak bersama kontraktor defendan telah menjalankan pemeriksaan bersama ke atas gudang tersebut. Pada akhir proses tersebut, kontraktor tersebut mengenal pasti 14 item yang memerlukan kerja-kerja pembetulan berjumlah RM52,650. Selepas beberapa siri pertukaran emel antara pihak-pihak, plaintif akhirnya hanya menjalankan item 14 (kerja pembersihan lantai gudang) dengan kos RM24,000. Plaintif kemudiannya menyaman defendan untuk pemulangan deposit sekuriti yang ditolak pemotongan yang dipersetujui. Defendan mendakwa bahawa plaintif gagal mengembalikan semula gudang tersebut dengan betul kepada keadaan asal apabila tamat tempoh penyewaan. Defendan memfailkan tuntutan balas sebanyak RM1,388,650 yang terdiri daripada sewa pro-rata, kos kerja-kerja pengembalian semula dan kehilangan pendapatan sewa selama tiga bulan. Selepas memberi kredit untuk deposit yang dipegang, jumlah bersih yang dituntut oleh defendan ialah RM538,650. Hakim mahkamah sesyen yang bijaksana ('HMS') membuat keputusan yang memihak kepada plaintif dan menolak tuntutan balas defendan, oleh itu, rayuan semasa. Isu-isu yang perlu ditentukan oleh mahkamah dalam rayuan ini ialah: (a) sama ada terdapat perjanjian untuk defendan menjalankan item 1 hingga 13 kerja-kerja pengembalian semula — berhubung dengan isu ini, dalam membuat dapatan yang memihak kepada plaintif, HMS meletakkan nilai yang besar kepada pertukaran emel antara pihak-pihak di mana plaintif mendakwa mengesahkan bahawa 'all repair works be made by the defendant for all works except item 14'

dan jawapan defendan yang menyatakan 'reconfirm per your previous email, that POINT NO 1 till POINT NO 13 is to be addressed by our contractors as per the quotation sent' ('pertukaran emel tersebut'); (b) sama ada plaintif memenuhi kewajipannya untuk mengembalikan semula gudang tersebut; dan (c) sama ada defendan berhak kepada tuntutan balasnya untuk ganti rugi.

**Diputuskan**, membenarkan rayuan dengan kos RM20,000 di sini dan di bawah, mengenepikan keputusan mahkamah sesyen, dan membenarkan tuntutan balas defendan untuk permohonan 18(i) dan 18(ii):

(1) Mahkamah tidak bersetuju dengan dapatan HMS bahawa persetujuan bersama wujud antara pihak-pihak di mana plaintif hanya akan bertanggungjawab untuk melaksanakan item 14 manakala defendan akan bertanggungjawab untuk item 1 hingga 13. Ini kerana dapatan ini tidak sejajar dengan keterangan dokumentar kontemporari yang ada di hadapan mahkamah bicara. Perjanjian penyewaan tersebut, khususnya klausa 2(e), mengenakan kewajipan yang tidak berbelah bahagi ke atas plaintif berkenaan dengan penyenggaraan dan keadaan pemulangan gudang. Kewajipan pengembalian semula telah dinyatakan secara khusus dalam klausa 4.2 perjanjian penyewaan tersebut. Keterangan dokumentar tidak menyokong kewujudan apa-apa persetujuan oleh defendan untuk mengetepikan kewajipan kontrak tersebut. Mahkamah berpendapat bahawa jawapan defendan tersebut hanyalah untuk mendapatkan penjelasan dan pertukaran emel tersebut, apabila dibaca dalam konteks yang betul, menunjukkan defendan hanya mengambil maklum kedudukan plaintif, bukannya menerima kedudukan tersebut (lihat perenggan 10–13 & 15).

(2) Hakim mahkamah sesyen yang bijaksana telah terkhilaf dalam membuat kesimpulan bahawa pemilikan kosong telah diserahkan dengan sewajarnya pada 25 Oktober 2021. Keterangan di hadapan mahkamah menggambarkan keadaan yang berbeza. Pada tarikh serahan yang dikatakan, hanya item 14 daripada kerja-kerja pengembalian semula tersebut telah disiapkan. Ini hanya merupakan kerja-kerja pembersihan lantai gudang. Keterangan bergambar yang dikemukakan di hadapan mahkamah adalah meyakinkan. Ia mendedahkan kerosakan besar pada premis tersebut yang masih belum diperbaiki. Gambar-gambar ini mendokumenkan pelbagai kawasan yang memerlukan pembaikan dan pemulihan yang besar. Keadaan fizikal gudang pada 25 Oktober 2021 tidak boleh, dengan apa-apa langkah yang munasabah, membentuk serahan pemilikan kosong yang sepatutnya (lihat perenggan 18).

(3) Mahkamah berpendapat bahawa pengelasan tuntutan defendan untuk kehilangan sewa sebagai kerugian ekonomi tulen oleh HMS yang bijaksana adalah suatu salah tanggap. Plaintif mempunyai kewajipan kontrak yang jelas untuk mengembalikan semula premis tersebut dengan

betul. Kegagalannya berbuat demikian mempunyai akibat kewangan serta-merta kepada defendan. Apabila kerugian sedemikian secara semula jadi timbul daripada pelanggaran kontrak, ia boleh dikompensasikan dengan sewajarnya (lihat perenggan 21).

(4) Defendan telah mengemukakan keterangan yang kukuh untuk membuktikan tuntutan balasnya untuk sewa pro-rata, kos pengembalian semula dan kehilangan pendapatan sewa. Seksyen 74 Akta Kontrak 1950 memperuntukkan tentang pemulihan ganti rugi bagi apa-apa pelanggaran yang secara semula jadi timbul dalam perjalanan biasa pelaksanaan kontrak. Defendan telah membuktikan kerugian sebenar melalui keterangan-keterangan berikut: (a) keadaan gudang sebelum dan selepas penyewaan selama lima bulan tersebut; (b) hakikat bahawa gudang tersebut tersedia untuk disewa; (c) garis masa yang disediakan oleh kontraktor untuk kerja-kerja pemulihan; dan (d) kesan langkah-langkap keselamatan COVID-19 ke atas penyiapan kerja-kerja tersebut (lihat perenggan 22, 28–29 & 37).

(5) Penganugerahan ganti rugi am oleh HMS yang bijaksana kepada plaintif tidak boleh dipertahankan kerana tiada keterangan telah dikemukakan untuk membuktikan kerugian tersebut. Sudah menjadi undang-undang yang mantap bahawa plaintif yang menuntut ganti rugi yang besar perlulah membuktikan kedua-dua fakta dan kuantum ganti rugi. Begitu juga, pemberian dua set kos berjumlah RM33,000 adalah keterlaluan untuk perbicaraan selama dua hari yang melibatkan tiga saksi dan dokumen dengan muka surat berjumlah kurang daripada 215. Walaupun kos adalah mengikut budi bicara, demi keadilan ia mestilah setimpal dan munasabah (lihat perenggan 38–39).]

**Cases referred to**

*Popular Industries Limited v Eastern Garment Manufacturing Sdn Bhd* [1989] 3 MLJ 360; [1990] 2 CLJ Rep 635; [1989] 2 MLRH 705, HC (refd)

*Public Bank Bhd v Low Kok Tin & Ors* [2001] 3 MLJ 350; [2001] CLJU 379, HC (folld)

**Legislation referred to**

Contracts Act 1950 s 74

*Leong Phaik Leng (with Weladavi Acharige Shashila) (Ram Caroline Sha & Syah) for the appellant.*

*Kenneth Koh Zhong Wey (with Afiq Iskandar bin Aziz) (Xavier & Koh Partnership) for the respondent.*

**Ahmad Shahrir J:**

INTRODUCTION

**[1]** In this judgment, the parties are referred to as they were before the trial court. This appeal relates to a landlord and tenant dispute over a warehouse in Selangor. At the trial court, the plaintiff as the tenant commenced proceedings against the defendant as the landlord for the return of security deposits under the tenancy. The defendant defended the claim and counterclaimed for damages alleging that the plaintiff had failed to properly reinstate the warehouse to its original condition when the tenancy expired.

**[2]** In the sessions court, the learned trial judge found in favour of the plaintiff on its claim and dismissed the defendant's counterclaim. The defendant was not satisfied and appealed against that decision.

**[3]** Upon a review of the evidence and considering the submissions before this court, I was satisfied that the learned sessions court judge erred in his appreciation of the evidence and arrived at conclusions that cannot be sustained on the totality of the evidence. Accordingly, I allowed the appeal.

BRIEF BACKGROUND FACTS

**[4]** The defendant and the plaintiff entered into a tenancy agreement dated 26 April 2021 for the plaintiff to rent the defendant's warehouse at Lot No 6, Persiaran Kota Puteri 6, 48100 Batu Arang, Selangor. The plaintiff paid security and utilities deposits totalling RM850,000.

**[5]** The initial tenancy period was for three months from 26 April 2021 to 25 July 2021. This tenure was extended twice by one month each time, ultimately expiring on 25 August 2021. The monthly rental was RM340,000.

**[6]** A joint inspection of the warehouse was conducted on 27 September 2021 attended by representatives of both parties and the defendant's contractor. The contractor identified fourteen items requiring rectification works totalling RM52,650. The plaintiff was to hand over vacant possession by 25 October 2021 after completing the rectification works.

**[7]** Between September and October 2021, the parties exchanged various emails regarding the scope and responsibility for the rectification works. The plaintiff ultimately carried out only item 14 (warehouse floor cleaning works) costing RM24,000. The defendant claimed the plaintiff failed to properly reinstate the warehouse causing loss of rental income.

**[8]** The plaintiff sued for return of the security deposits less agreed deductions. The defendant counterclaimed for RM1,388,650 comprising pro-rated rental, costs of reinstatement works and loss of rental income for three months. After giving credit for the deposits held, the net sum claimed was RM538,650.

ANALYSIS AND FINDINGS

**[9]** This appeal turned on three central questions as follows:

(a) whether there was an agreement for the defendant to carry out items 1 to 13 of the reinstatement works;

(b) whether the plaintiff fulfilled its obligations to reinstate the warehouse; and

(c) whether the defendant was entitled to its counterclaim for damages.

**[10]** The learned sessions court judge came to the conclusion that a mutual agreement existed between the parties whereby the plaintiff would only be responsible for completing item 14 of the reinstatement works while the defendant would assume responsibility for items 1 to 13. Having examined the evidence with anxious scrutiny, respectfully, I am unable to agree with this finding as it did not accord with the contemporaneous documentary evidence before the trial court.

**[11]** The tenancy agreement imposed unequivocal obligations on the plaintiff with respect to the maintenance and return condition of the warehouse. The governing provision, cl 2(e), cast a specific duty on the plaintiff requiring it to keep the whole of the premises including but not limited to any fixtures and fittings in hygienic condition and good and tenantable repair at the plaintiff's own cost and expense. This comprehensive obligation encompassed the entirety of the premises and placed the financial responsibility of upkeep squarely on the plaintiff.

**[12]** The reinstatement obligations were specifically addressed in cl 4.2 of the tenancy agreement. The clause required both parties to conduct a joint inspection of the premises upon expiry of the tenancy. Any damage identified by the defendant during this inspection was to be rectified by the plaintiff at its own cost. Should the defendant be dissatisfied with the plaintiffs rectification works, the defendant's contractor would undertake the necessary repairs. The cost of such repairs would then either be reimbursed by the plaintiff or set off against the security deposit.

**[13]** The documentary evidence did not support the existence of any agreement by the defendant to waive the contractual obligations. The

correspondence between the parties reinforced this position. In an email dated 23 September 2021, the defendant explicitly reminded the plaintiff of its obligations. The defendant stated, 'as mentioned in the agreement, you can bring your contractor and reinstate the premise in good and tenantable condition then we can inspect the premise upon completion of work to make sure the work is done satisfactory to us'. This communication clearly demonstrated the defendant's insistence on adherence to the original contractual terms.

**[14]** Following the joint inspection, the defendant sent another email to the plaintiff on 29 September 2021. In this communication, the defendant reiterated the plaintiff's obligation to undertake the reinstatement works. The defendant expressly stated that the plaintiff 'can get this work done through anyone'. This latitude in the selection of contractors was subject only to the defendant's final approval of the completed works. Throughout the ensuing correspondence, the defendant never deviated from this position. In my considered view, the consistency of the defendant's stance effectively impaired any suggestion of a subsequent agreement to assume responsibility for the works.

**[15]** The learned sessions court judge attached considerable weight to an email exchange whereby the plaintiff purported to confirm that 'all repair works be made by the defendant for all works except item 14'. The defendant's reply however, was merely seeking clarification. The defendant's email specifically stated, 'reconfirm per your previous email, that POINT No 1 till POINT No 13 is to be addressed by our contractors as per the quotation sent'. With respect, I found the learned judge's interpretation of this exchange as constituting a binding agreement was not supported by a proper and contextual reading of the correspondence. The exchange, read in its proper context, showed the defendant was simply acknowledging receipt of the plaintiff's position rather than accepting it.

**[16]** The testimony of the defendant's witness, DW2, provided crucial context to this exchange. Under cross-examination, DW2 explained that the defendant's email was not an acceptance of the plaintiff's position. Rather, it was merely an attempt to seek clarification. This interpretation aligned with the defendant's consistent stance throughout the correspondence. The defendant had always maintained that while its contractor was available to perform the works, both the obligation to restore the premises and the associated costs remained the plaintiff's responsibility. The witness' testimony on this point remained unshaken during cross-examination.

**[17]** Further support for this interpretation was found in the defendant's email dated 15 October 2021. In this communication, the defendant informed

A the plaintiff that its contractor would require a total of five weeks to complete the reinstatement works. The defendant also explicitly suggested that the plaintiff could engage its own contractors if it wished to meet the 25 October 2021 deadline. The tenor of this email was significant. It demonstrated that the defendant was merely offering practical assistance for the completion of works. B There was no indication of any intention to assume responsibility for the works. The email, read objectively, showed the defendant maintaining its position that the contractual obligation remained with the plaintiff.

C **[18]** The learned sessions court judge fell into error in concluding that proper vacant possession was delivered on 25 October 2021. The evidence before the court told a different story. As at the purported date of delivery, only item 14 of the reinstatement works had been completed. This constituted merely the warehouse floor cleaning works. The photographic evidence placed before the court was compelling. It revealed extensive damage to the premises D that remained unrectified. These photographs document multiple areas requiring substantial repairs and restoration. The physical state of the warehouse on 25 October 2021 could not, by any reasonable measure, constitute proper delivery of vacant possession.

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**[19]** The legal position on compensation for loss of rental is well-established. The court in *Public Bank Bhd v Low Kok Tin & Ors* [2001] 3 MLJ 350; [2001] CLJU 379 provides clear guidance. In that case, His Lordship the Honourable Justice Mokhtar Sidin observed that a landlord is entitled to compensation for F loss of rental. This entitlement covers the period reasonably required to complete remedial works. In that case, the court remarked that it was obvious that the premises could not be leased while such works were being carried out.

**[20]** The defendant has adduced evidence that its contractor required three G months to complete the reinstatement works. Several factors support the reasonableness of this timeline. First, the scope of work was substantial involving multiple areas of the warehouse. Second, COVID-19 restrictions were in force during the relevant period. Third, there were documented labour shortages in the construction sector. These constraints were clearly H communicated to the plaintiff through contemporaneous correspondence. Despite being fully aware of these circumstances, the plaintiff made no attempt to undertake the works before the handover deadline. The plaintiff's inaction in the fact of these known constraints was significant.

I **[21]** Respectfully, I found further errors in the decision of the learned trial judge. In my considered view, the characterisation of the defendant's claim for loss of rental as pure economic loss was misconceived. This loss stemmed directly from the plaintiff's breach of contract. The plaintiff had a clear contractual obligation to properly reinstate the premises. Its failure to do so had

immediate financial consequences for the defendant. Where such loss naturally flows from a breach of contract, it is properly compensable. With respect, the learned trial judge's finding on this point cannot be sustained.

**[22]** The defendant has led cogent evidence to establish its counterclaim for pro-rated rental and reinstatement costs. Several critical pieces of evidence warrant careful consideration. The defendant produced comprehensive photographic documentation showing the state of the warehouse before the tenancy commenced. These photographs depict the premises in good tenantable condition.

**[23]** The defendant also produced photographs taken during the joint inspection on 27 September 2021. These photographs revealed significant deterioration of the premises. The damage documented includes issues with the shutter system, damage to pillars, and substantial floor damage. The contrast between the pre-tenancy and post-tenancy photographs was striking.

**[24]** The defendant's contractor, KW Construction, provided a detailed quotation itemizing the necessary repairs. This quotation breaks down each item of work required with corresponding costs. The total sum of RM28,650 for items 1 to 13 was supported by market rates. The plaintiff has not challenged the reasonableness of these costs.

**[25]** The email correspondence from September to October 2021 documented the defendant's consistent position regarding the required works. The defendant's email dated 19 October 2021 specifically highlighted that the damage was so extensive that the warehouse was non-tenantable during the time of repairs. The evidence showed damage to critical components including the shutter system, flooring, and structural pillars.

**[26]** The defendant's witness DW2 provided clear testimony about the impact of these defects on the warehouse's tenantability. His evidence on this point remained unshaken during cross-examination. The plaintiff produced no contrary expert evidence to challenge the necessity of the repairs or their costs.

**[27]** The documentary evidence confirmed the monthly rental value of RM340,000. This was the established rate under the tenancy agreement. The plaintiff has not disputed this sum as representing the market rate for the premises.

**[28]** The totality of this evidence provided a firm foundation for the defendant's claim for pro-rated rental and reinstatement costs. Respectfully, the

learned sessions court judge failed to give proper weight to this compelling body of evidence.

**[29]** The defendant's counterclaim was further substantiated by contemporaneous business records. The rental ledger maintained by the defendant showed the consistent payment of RM340,000 monthly rental during the tenancy period. This established a clear basis for quantifying the loss of rental income.

**[30]** The defendant also produced correspondence with potential new tenants. This correspondence spanned the period from September to October 2021. Multiple prospective tenants expressed interest in leasing the warehouse. However, these opportunities could not be pursued due to the premises' state of disrepair. The defendant's witness DW2 testified about specific instances where potential tenants declined to proceed after viewing the premises.

**[31]** Evidence regarding market conditions during the relevant period was also significant. The defendant produced market reports showing strong demand for industrial warehouses in the area. These reports corroborated DW2's testimony about active interest in the premises. The plaintiff did not challenge this evidence.

**[32]** The timeline for repairs was supported by detailed contractor records. KW Construction provided a comprehensive work schedule showing the sequence of necessary repairs. This schedule accounted for material procurement times, labour requirements, and COVID-19 safety protocols. Independent evidence of construction industry conditions during this period confirmed the reasonableness of the projected timeline.

**[33]** The defendant maintained meticulous records of all communication regarding the reinstatement works. These records showed systematic efforts to expedite the repairs while maintaining quality standards. The correspondence revealed the defendant's consistent attempts to minimise downtime while ensuring proper completion of necessary works.

**[34]** Financial records demonstrated the actual costs incurred by the defendant. These included contractor payments, material costs, and administrative expenses related to the reinstatement works. Each expense was properly documented with corresponding invoices and payment records.

**[35]** The authentication of this documentary evidence was not challenged during cross-examination. The plaintiff's witnesses did not dispute the accuracy or authenticity of these records. This uncontroverted evidence provided a solid foundation for quantifying the defendant's losses.

**[36]** Having meticulously examined all the evidence, I am satisfied that the appellant has established its counterclaim on a balance of probabilities. The evidence demonstrated actual loss flowing directly from the plaintiff's breach of contract. The quantum claimed was both reasonable and properly substantiated.

**[37]** Section 74 of the Contracts Act provides for recovery of damages that naturally arose in the usual course of things from a breach. The defendant has proven actual loss through evidence of the following:

(a) the state of the warehouse before and after the five-month tenancy;

(b) the fact that the warehouse was available for rent;

(c) the timeline provided by contractors for rectification works; and

(d) the impact of COVID-19 measures on completing works.

**[38]** The learned sessions court judge's award of general damages to the plaintiff cannot stand as no evidence had been led to establish such loss. It is trite that a plaintiff seeking substantial damages must prove both the fact and quantum of damages (see: *Popular Industries Limited v Eastern Garment Manufacturing Sdn Bhd* [1989] 3 MLJ 360; [1990] 2 CLJ Rep 635; [1989] 2 MLRH 705).

**[39]** Similarly, the award of two sets of costs totalling RM33,000 was excessive for a two-day trial involving three witnesses and less than 215 pages of documents. While costs are discretionary, in the interest of justice they must be proportionate and reasonable.

CONCLUSION

**[40]** On the basis of the aforesaid reasons, I allowed this appeal with RM20,000 costs here and below. The decision of the sessions court dated 28 February 2023 was set aside. I also allowed the defendant's counterclaim for prayers 18(i) and 18(ii).

*Appeal allowed with RM20,000 costs here and below; decision of sessions court set aside; defendant's counterclaim for prayers 18(i) and 18(ii) allowed.*

Reported by Dzulqarnain Ab Fatar